National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL
Advice Memorandum

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Communications Workers of America (C & P Telephone), Cases 5-CB-6435 et al.

536-5050-6730, 536-5075-0150-7500, 536-5075-0150-7575, 536-5075-0150-8700

These Section 8(b)(1)(A) cases are submitted for Advice concerning the impact of an unlawful provision in a union's constitution requiring that resignations be accomplished by certified mail. We conclude that the seven instant cases should be disposed of consistent with the Board's decision in Local 449, UAW (National Metalcrafters),[1] and the analyses set forth below.

The Board has held that union members have a right to resign from membership, that a union cannot lawfully restrict that right, [2] and that the mere maintenance of such restrictions violates Section 8(b)(1)(A) of the Act.[3] In National Metalcrafters, the Board affirmed a decision by an ALJ holding, inter alia, that:

the requirements of registry and/or certification and return receipt for written resignations are themselves restrictions on resignation that accomplish nothing but to make the process of resignation more difficult. Id. at 185.

The ALJ held that this constitutional provision was an unlawful restriction on resignation. In Douglas Aircraft, above, [4] the Board stated that:

The provision that resignation is effective only if sent by registered or certified mail within 10 days prior to the end of the fiscal year of the local union also violates the Act. As the court stated, "these restrictions serve no legitimate purpose; they only make it difficult for a member to exercise the right to withdraw from the union." citing Auto Workers v. NLRB, 865 F.2d 791, 796-797 (Sixth Cir. 1989)

Case 5-CB-6435

Marcia DeMario sent a letter of resignation by certified mail on August 7, 1989, which was received by the CWA, Local 2101 (Union) the following day. She returned to work on August 16, 1989. The Union fined DeMario for working during the period from August 16, 1989 to August 28, 1989. After the ULP charge in this case was filed against the Union, it rescinded its fine. DeMario refused to accept this action as an adjustment of the case.

We conclude that the charge is meritorious in that the Union had received DeMario's resignation before she returned to work. Thus, the fine was unlawful. Moreover, the Board has held that the rescission of a fine under these circumstances is insufficient to remedy the coercive and restraining effect of the Union's action.[5] Therefore, the Region should proceed to litigate this charge, absent settlement.

Case 5-CB-6438

Nina Tucker sent the Union a letter, by certified mail, resigning from the Union on August 11, 1989. The Union received the letter on the following day. Tucker returned to work on August 11, 1989. The Union fined Tucker for working on August 11, 1989. According to Tucker, she was told by shop steward Collins that a resignation would be valid if it was postmarked before the sender crossed the picket line. Tucker claims that she relied on this information when she sent in her resignation before she returned to work.

We conclude that the Union violated Section 8(b)(1)(A) of the Act by fining Tucker for crossing the picket line after informing

her that her resignation would be honored from the date it was postmarked. Further, even if Tucker had not been decieved, we would argue that the resignation should still be considered effective on August 11. Since the resignation provision in the Union's constitution is unlawful, employees are free to resign at will.[6] We would argue that, by a parity of reasoning, they are free to resign in any manner. Thus, Tucker was free to deliver her resignation by personal delivery or by phone, on August 11 prior to her crossing the picket line.

Case 5-CB-6453

Kim Cox sent the Union a letter, by certified mail, resigning from the Union on August 21, 1989. Cox went to work that same day and the Union received the letter of resignation the following day. After the strike, internal Union charges were filed against Cox and she was fined for having worked on August 21, 1989. For the reasons set forth in the discussion of Case 5-CB-6438, we conclude that the Union violated Section 8(b)(1)(A) by fining Cox.

Case 5-CB-6466

Michele Stancil sent the Union a resignation letter, by certified mail, on August 7, 1989. She returned to work the following day. The Union received the letter on August 11, 1989. After the strike, the Union fined Stancil for working during the period August 7, 1989 to August 10, 1989. Stancil stated that she sent her resignation by certified mail not because of the Union's unlawful constitutional requirement, but instead to make sure that the Union received her resignation.[7] Thus, even absent Union's unlawful provision, Stancil would have chosen to resign by certified mail. Since the certified mail was not received until August 11, the Union could fine her for working on August 7-10.

Case 5-CB-6491

On August 7, 1989, Joan Hamilton sent the Union a resignation letter by certified mail. Hamilton claims that she had been instructed to resign by certified mail by her shop stewards. Hamilton returned to work on August 8, 1989 and her resignation was received by the Union on August 16, 1989. Hamilton was fined for working during the strike prior to the Union's receipt of her resignation. We conclude that the Union violated Section 8(b)(1)(A) of the Act based on the analysis set forth in the discussion of Case 5-CB-6438 above.

Case 5-CB-6495

On June 5, 1989, Linda Henning sent the Union a resignation letter by regular mail. The Union apparently received her resignation shortly after it was mailed. Henning returned to work on August 28, 1989, the last day of the strike. Henning was fined by the Union for working one day during the strike. After Henning filed the instant ULP charge, the Union rescinded the fine assessed against her. We conclude that the Region should proceed and litigate the instant charge for the reasons set forth in the discussion of Case 5-CB-6435 above.

Case 5-CB-6439

Avent sent the Union a resignation letter, by certified mail, on August 9, which was received by the Union on August 11. She returned to work on August 8. After the strike, the Union fined Avent for having worked on August 8-10.

Avent's boyfriend, Howard, asserts that on August 7 he attempted to hand deliver a written resignation for Avent. The receptionist at the union hall refused to accept the resignation.

As set forth in 5-CB-6438, Avent was free to resign by any method. Indeed, she chose the method of hand delivery on August 7.[8] Thus, the Union could not fine her for working on August 8-10.

Accordingly, the instant charges should be disposed of consistent with the analyses set forth above.

H.J.D.

[1] 283 NLRB 182, 185 (1987); UAW, Local Union No. 148 (Douglas Aircraft), 296 NLRB No. 125, slip op. at p. 4 (1989).

[2] Machinists Local 1414 (Neutered Porsche-Audi), 270 NLRB 1330 (1984).

[3] Engineers & Scientists Guild (Lockheed-California), 268 NLRB 311 (1983); Typographical Union (Register Publishing), 270 NLRB 1386 (1984).

[4] slip op. p. 4.

[5] CWA Local 11509 (A T & T), 283 NLRB 957, 959 (1987).

[6] See Capitol-Husting Company, Inc., 235 NLRB 1264, 1265 (1978).

[7] If this was not the sole reason for Stancil's decision to use certified mail, the Region should resubmit the case.

[8] We would regard Howard as her agent for making the delivery.